

Joseph W. Cotchett (36324; jcotchett@cpmlegal.com)
Steven N. Williams (175489; swilliams@cpmlegal.com)
Stuart G. Gross (251019; sgross@cpmlegal.com)

COTCHETT, PITRE & McCARTHY

San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
T: (650) 697-6000
F: (650) 697-0577

Michael D. Hausfeld (pro hac vice; mhausfeld@cmht.com)
Charles E. Tompkins (pro hac vice; ctompkins@cmht.com)
Andrea L. Hertzfeld (pro hac vice; ahertzfeld@cmht.com)

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C

1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005
T: (202) 408-4600
F: (202) 408-4699

*Counsel for Plaintiffs and
Interim Counsel for Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE INTERNATIONAL AIR
TRANSPORTATION SURCHARGE
ANTITRUST LITIGATION

Case No. M:06-cv-01793-CRB

MDL No. 1793

**~~PROPOSED~~ ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENTS
WITH BRITISH AIRWAYS AND
VIRGIN ATLANTIC AIRWAYS**

This Document Relates to:

ALL ACTIONS

Date: April 25, 2008
Time: 10:00 AM
Place: Courtroom 8
Judge: The Hon. Charles R. Breyer

***THIS DOCUMENT RELATES TO
ALL CASES***

1 WHEREAS, a class action is pending before the Court entitled *In Re International*
2 *Air Transportation Surcharge Antitrust Litigation*, Master File 06-01793 CRB;

3 WHEREAS, the Court has received the settlement agreements which have been
4 entered into by the Plaintiffs and Virgin Atlantic Airways, Ltd. and British Airways Plc,
5 both dated February 15, 2008 ("Settlement(s)");

6 WHEREAS, the Court has reviewed the Settlements;

7 WHEREAS, the Plaintiffs have made a Motion for Preliminary Approval of the
8 Settlements Between Plaintiffs and Virgin Atlantic Airways, Ltd. and British Airways
9 Plc, pursuant to Federal Rule of Civil Procedure 23(e), requesting that the Court
10 preliminarily approve the settlements and certify the Settlement Classes for the purpose of
11 settlement ("Motion");

12 WHEREAS, the Court has reviewed and considered the Motion, the exhibits
13 attached thereto, and the declarations and affidavits submitted therewith;

14 WHEREAS, all defined terms contained herein shall have the same meanings as
15 set forth in the Settlements, unless otherwise defined herein;

16 WHEREAS, on December 18, 2006, the Court appointed Cotchett, Pitre, Simon &
17 McCarthy (now known as Cotchett, Pitre & McCarthy ("CPM")), and Cohen Milstein,
18 Hausfeld & Toll ("CMHT") Interim Class Counsel;

19 WHEREAS, Interim Class Counsel and Settling Defendants have had no
20 discussions regarding the amount of the attorneys' fees, costs, and expenses of Interim
21 Class Counsel, which, according to the terms of the Settlements, will be paid by Settling
22 Defendants separate and apart from any consideration paid by Settling Defendants to
23 members of the Settlement Classes;

24 WHEREAS, the Motion, accordingly, does not address the issue of payment by
25 Settling Defendants of the attorneys' fees, costs, and expenses of Interim Class Counsel;
26 and

27 WHEREAS, the Motion does not address issues related to giving members of the
28 Settlement Classes notice of the Settlements and the hearing on final approval of the

1 Settlements ("Final Approval Hearing"), those issues to be addressed in separate filings
2 by the Parties;

3 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

4 1. This Court finds that it has jurisdiction over this action, each of the parties
5 to the Settlement Agreements, and the members of the proposed Settlement Classes.

6 2. The Court does hereby preliminarily approve the Settlements and the
7 Settlement Agreements, including the releases contained therein, as being fair,
8 reasonable, and adequate to the Settlement Classes, subject to further consideration at the
9 Final Approval Hearing described below. The Court finds that the Settlements were
10 entered into at arms'-length by highly experienced counsel and are sufficiently within the
11 range of reasonableness so that notice of the Settlements should be given to members of
12 the Settlement Classes.

13 3. Solely for the purposes of the Settlements and the Settlement Agreements,
14 the Court hereby certifies the following Settlement Classes, finding that each element for
15 certification of the Settlement Classes, pursuant to Rule 23 of the Federal Rules of Civil
16 Procedure, has been met:

17 A. British Airways U.S. Settlement Class: All Persons to whom, in the
18 period beginning on August 11, 2004 and ending on March 23, 2006,
19 British Airways sold, in the United States, at least one coupon for
20 passenger air travel on a flight operated by British Airways and as to
21 which the long-haul fuel surcharge was paid and not refunded in
22 whole as of the date of the Settlement Agreement ("U.S. Qualifying
23 Coupon"), but excluding the officers, directors, employees, counsel
24 and agents of British Airways, and all government entities.

25 B. British Airways U.K. Settlement Class: All Persons to whom, in the period
26 beginning on August 11, 2004 and ending on March 23, 2006, British
27 Airways sold, in the United Kingdom, at least one coupon for passenger air
28 travel on a flight operated by British Airways and as to which the long-haul
fuel surcharge was paid and not refunded in whole as of the date of the
Settlement Agreement ("U.K. Qualifying Coupon"), but excluding the
officers, directors, employees, counsel and agents of British Airways, and
all government entities.

C. Virgin Atlantic U.S. Settlement Class: All Persons to whom,
in the period beginning on August 11, 2004 and ending on
March 23, 2006, Virgin Atlantic sold, in the United States, at
least one coupon for passenger air travel on a flight operated
by Virgin Atlantic and as to which the long-haul fuel
surcharge was paid and not refunded in whole as of the date

1 of the Settlement Agreement ("U.S. Qualifying Coupon"), but
2 excluding the officers, directors, employees, counsel and
agents of Virgin Atlantic, and all government entities.

3 D. Virgin Atlantic U.K. Settlement Class: All Persons to whom, in the
4 period beginning on August 11, 2004 and ending on March 23, 2006,
Virgin Atlantic sold, in the United Kingdom, at least one coupon for
5 passenger air travel on a flight operated by Virgin Atlantic and as to
6 which the long-haul fuel surcharge was paid and not refunded in
whole as of the date of the Settlement Agreement ("U.K. Qualifying
Coupon"), but excluding the officers, directors, employees, counsel
7 and agents of Virgin Atlantic, and all government entities.

8 4. The Court finds that certification of the Settlement Classes is warranted in
9 light of the Settlements because: (a) the Settlement Class Members are so numerous that
10 joinder is impracticable; (b) Plaintiffs' claims present common issues and are typical of
11 the Settlement Classes; (c) Plaintiffs and Settlement Class Counsel will fairly and
12 adequately represent the Settlement Classes; and (d) common issues predominate over
13 any individual issues affecting Settlement Class members. The court further finds that
14 Plaintiffs' interests are aligned with the interests of all other Settlement Class Members.
15 The Court also finds that settlement of this action on a class basis is superior to other
16 means of resolving this matter.

17 5. Solely for the purposes of the Settlements and the Settlement Agreements,
18 plaintiffs Kambiz Pahlavan, Frederick Waters, Maureen Ann Waters, and Deborah Holley
19 ("Plaintiffs") are hereby certified as class representatives for the Settlement Classes
20 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

21 6. The certification of the Settlement Classes shall be binding only with
22 respect to the Settlements and only if the final order of judgment and dismissal
23 contemplated by the Settlement Agreements become final and the Effective Date occurs.
24 If, for any reason, either or both of the Settlement Agreements are terminated, or the
25 Effective Date for any reason does not occur with respect to either or both of the
26 Settlements, the certification of the Settlement Classes shall automatically be vacated,
27 *nunc pro tunc*, with respect to such Settlement or Settlements. In such case, neither the
28 Settlement Agreement(s) nor any order of this Court certifying the Settlement Classes will

1 be binding on the Parties to such Settlement(s), this lawsuit shall proceed as though the
2 Settlement classes had never been certified, and such Settling Defendant(s) may oppose
3 and assert all objections to certification of any class or subclass sought by any party to
4 this lawsuit or any of the Actions, regardless of whether such class or subclass is the same
5 as, or different from, the Settlement Classes.

6 7. The Court appoints Interim Class Counsel, CPM and CMHT, as Settlement
7 Class Counsel, finding that they each meet the requirements of Rule 23(g) of the Federal
8 Rules of Civil Procedure.

9 8. The Court enjoins initiation, commencement, or prosecution of any action
10 or claims by any Releasing Party against Settling Defendants that is subject to the release
11 and dismissal contemplated by the Settlements.

12 9. The Final Approval Hearing will be held before this Court on Sept. 26,
13 2008 at 10:00 AM (or at any other time or times as the Court may direct without further
14 notice to members of the Settlement Classes) before the Honorable Charles R. Breyer in
15 the United States District Courthouse, 450 Golden Gate Ave., San Francisco, CA 94122,
16 for the purpose of considering: (i) whether the Settlements should be approved as fair,
17 reasonable, and adequate to members of the Settlement Classes, and whether judgment
18 should be entered dismissing the claims of Plaintiffs and all members of the Settlement
19 Classes on the merits and with prejudice, in accordance with the terms of the Settlements;
20 and (ii) whether to approve any application by Settlement Class Counsel for an award of
21 attorneys' fees and payment of costs and expenses.

22 10. The Court orders that, subject to any further order by the Court regarding
23 the provision of notice to members of the Settlement Classes, any member of the
24 Settlement Classes who seeks exclusion from the Settlement Classes must submit a
25 Request for Exclusion on September 12, 2008. Any Settlement Class Member
26 that submits a Request for Exclusion in accordance with the provisions of the notices to
27 the Settlement Classes shall be excluded from the Settlement Classes and shall not be
28 entitled to share the benefits of the Settlements, nor be bound by any judgment in this

lawsuit, whether favorable or adverse.

11. The Court orders that, subject to any further order by the Court, any member of the Settlement Classes who has not requested exclusion from the Settlement Classes and who objects to the Settlement(s) may appear at the Final Approval Hearing in person or through counsel, at their own expense, to present any evidence or argument with respect to the Settlement(s), to the extent permitted by the Court. However, no such member of the Settlement Classes shall be heard, and no papers, briefs, pleadings, or other documents shall be received and considered by the Court unless such member of the Settlement Classes properly submits a written objection that includes (a) notice of their intention to appear, (b) proof of membership in a Settlement Class, and (c) specific grounds for the objection. Such objections must be filed with the Court no later than fourteen (14) days prior to the date set for the Final Approval Hearing, and mailed to Settlement Class Counsel and Settling Defendants' counsel, at the addresses below, postmarked no later than September 12, 2008:

Settlement Class Counsel
Cohen Milstein Hausfeld & Toll
1100 New York Avenue, N.W.
Washington, DC 20005

Counsel for Settling Defendant British Airways
Sullivan & Cromwell LLP
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Settlement Class Counsel
Cotchett Pitre & McCarthy
San Francisco Airport Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

Counsel for Settling Defendant Virgin Atlantic
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017

Any member of the Settlement Classes who fails to object in the manner prescribed herein shall be deemed to have waived any objections to the Settlements and will forever be barred from making any such objections.

12. In the event that either or both of the Settlements are terminated in accordance with the provisions of the Settlement Agreements, or the Effective Date does not occur, such Settlement(s) and all proceedings had in connection therewith shall be null and void, and this Preliminary Approval Order shall be rendered null and void with respect to such Settlement(s) and shall be vacated *nunc pro tunc*, with respect to such

1 Settlement(s) except insofar as expressly provided to the contrary in the Settlement
2 Agreement(s), and without prejudice to the *status quo ante* rights of Plaintiffs, Settlement
3 Class Members, and Settling Defendants.

4 13. The Court retains jurisdiction over all proceedings arising out of or related
5 to the settlement Agreements and the Settlements.

6 14. The Court reserves the right to adjourn the date of the Final Approval
7 Hearing without further notice to the members of the Settlement Classes, and retains
8 jurisdiction to consider all further applications arising out of or connected with the
9 Settlements. The Court may approve the Settlements, with such modifications as may be
10 agreed to by the Settling Defendants and Plaintiffs, if appropriate, without further notice
11 to members of the Settlement Classes. Without further order of the Court, the Parties may
12 agree to reasonable extensions of time to carry out any of the provisions of this
13 Preliminary Order or the Settlement Agreements.

14 IT IS SO ORDERED

15 Dated: April 25, 2008

16
17 
18 HON. CHARLES R. BREYER
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28